

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Petition for Waiver of)
AirTouch Paging of)
Sections 64.1300(c) and (d))
of the Commission's Rules)

CC Docket No. 96-128

To: The Chief, Common Carrier Bureau

COMMENTS IN SUPPORT OF
PETITION FOR WAIVER

PageMart Wireless, Inc. ("PageMart"), by its attorneys, and pursuant to Section 1.3 of the Commission's Rules,^{1/} hereby submits these comments in support of the above-captioned Petition for Waiver ("Waiver Petition") filed by AirTouch Paging ("AirTouch"),^{2/} in which AirTouch seeks a limited, temporary waiver of the obligation to compensate payphone service providers ("PSPs") for toll-free calls placed from payphones.^{3/}

PageMart is a paging company that provides innovative, low-cost, nationwide services. Through contracts with various interexchange carriers ("IXCs"),

^{1/} 47 C.F.R. § 1.3.

^{2/} AirTouch Petition for Waiver, filed December 15, 1997; Public Notice, Pleading Cycle Established for Petition to Waive Payphone Per-Call Compensation Obligations, DA 97-2735 (Dec. 31, 1997).

^{3/} See 47 C.F.R. §§ 64.1300(c), (d).

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PageMart subscribes to 800 and 888 numbers and provides these numbers to its customers, who may then be paged without the calling party's incurring a long distance toll charge. PageMart is therefore directly affected by the FCC's decision to allow IXCs to pass on to their customers, including paging providers, the costs incurred by IXCs in compensating PSPs for 800/888 number calls.^{4/}

PageMart strongly supports the Waiver Petition, and respectfully requests that the Common Carrier Bureau (the "Bureau") grant a temporary waiver of the payphone compensation obligation to all carriers required to remunerate PSPs for toll-free payphone calls, at least until the particular PSP seeking payment has provided the payphone-specific coding digits required to allow selective call blocking, and the carrier is able selectively to block payphone toll-free calls.

As AirTouch has forcefully demonstrated in the Waiver Petition,^{5/} the presumed availability of selective call blocking was a fundamental premise of the Commission's carrier-pays, market-based payphone compensation scheme, and the single most important cited basis for the endorsement of this framework by the D.C.

^{4/} Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20,541 (1996) ("First Report and Order"), Order on Reconsideration, 11 FCC Rcd 21,233 (1996) ("Order on Reconsideration"), Second Report and Order, FCC 97-371 (Oct. 9, 1997) ("Second Report and Order"), pets. for recon. pending; petitions for review pending, sub nom. MCI Telecommunications Corp. v. FCC (D.C. Cir. Nos. 97-1675 et al.). PageMart filed a petition for review of the First Report and Order, comments and reply comments in connection with the remand of that order by the Court of Appeals, and a Petition for Reconsideration of the Second Report and Order.

^{5/} Waiver Petition at 7-8.

Circuit Court of Appeals.^{6/} In the Order on Reconsideration, the Commission imposed the requirement that PSPs provide IXC's with the coding digits required to allow selective call blocking.^{7/} Consequently, in response to the point made in the Court of Appeals by numerous carriers that the Commission's carrier-pays system did not promote competition because the party bearing the expense for a call could not avoid it, the Commission responded that the party incurring the cost could indeed avoid it by blocking calls from payphones charging excessive rates.^{8/} Accepting the FCC's rationale, the Court explained:

Subscribers to an 800 service can utilize a carrier's call-blocking capability by negotiating with the carrier to block calls from payphones with excessive per-call compensation charges. . . . Thus a "buyer" (the carrier or the 800 service subscriber) will have the option of rejecting a "seller's" (the PSP) excessively priced service. Given this explanation, the Commission's conclusion that a "carrier pays" compensation system will result in competitive market pricing of 800 service payphone per-call compensation charges was not arbitrary or capricious.^{9/}

The Bureau has, however, invalidated the pivotal premise of the Court's decision. While recognizing, as the Commission had established, that "[t]he provision of coding digits is a prerequisite to payphone per-call compensation payments by IXC's to PSPs," the Bureau granted PSPs a waiver of the Commission-imposed requirement that they provide such coding digits, until March 9, 1998.^{10/} In

^{6/} Illinois Public Telecom. Assoc. v. FCC, 117 F.3d 555, 566 (D.C. Cir. 1997).

^{7/} Order on Recon. at ¶ 64.

^{8/} Illinois Public Telecom., 117 F.3d at 566.

^{9/} Id. at 566-67.

^{10/} Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, (continued...)

granting this waiver, the Bureau erroneously concluded that the inability to block payphone calls from the forty percent of payphones unable to transmit coding digits would not "significantly harm" IXCs.^{11/} The Bureau might have been correct in recognizing the limited harm to IXCs, for those carriers can still determine which calls originated from payphones, and can bill toll-free subscribers and compensate PSPs for such calls. What the Bureau plainly ignored and thus failed to address, however, was the injury to consumers who rely on toll-free subscriptions for important aspects of their daily lives.

The harm to individuals from the Bureau's decision is indeed significant. Until payphone-specific coding digits are provided by PSPs, and IXCs are able to implement selective call blocking, PageMart's 800-number customers and other toll-free subscribers will be forced to pay per-call charges for all calls from payphones, without the option of avoiding such costs. Such charges will have to be paid even if they are considered by the subscriber to be excessive. In addition, such charges will be borne for unwanted, fraudulent, frivolous and excessive calls. This is certainly not what the D.C. Circuit intended when it allowed the Commission to require an entity other than the caller to pay for a toll-free payphone call.

To the contrary, the Court clearly envisioned a framework under which subscribers could exercise the power of choice by rejecting undesired calls, and thereby set the true market rate for toll-free payphone calls. Because coding digits

^{10/}(...continued)

Order, DA 97-2162, at ¶ 1 (Oct. 7, 1997) (Common Carrier Bureau) ("Waiver Order").

^{11/} Waiver Order at ¶ 13.

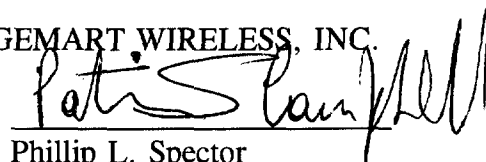
are required for call blocking, and given the paramount significance of the availability of call blocking to the FCC's payphone compensation scheme, as recognized by the Court and by the Commission itself, fundamental principles of fairness and equity dictate that the Bureau, having waived the requirement that PSPs provide such digits, must also waive the per-call compensation requirement until PSPs provide those digits, and carriers are able to implement selective blocking. Simply put, the Bureau would be acting arbitrarily and capriciously if it did not grant such relief to carriers and their customers.

For the foregoing reasons, PageMart vigorously supports the Waiver Petition filed by AirTouch.

Respectfully submitted,

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Date: January 15, 1998

CERTIFICATE OF SERVICE

I, Grace Belmonte, hereby certify that I have on this 15th Day of January, 1998, caused to be served true and correct copies of the foregoing Comments in Support of Petition for Waiver of PageMart Wireless, Inc., by hand or by first-class mail^(*), upon the following:

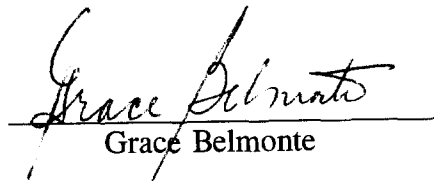
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